IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER
IN

S.B. Civil Second Appeal No.157/1988

Khushi Ram (since deceased) through L.Rs.
Keshar Devi W/o Khushi Ram & Others
...defendant-appellants
Versus
Madan Lal (since deceased) through L.Rs.
Smt. Santra Devi W/o late Shri Madan Lal & Others
...plaintiff-respondents
AND
Phool Chand S/o Shiv Charan Lal & Others
...defendant-respondents

Date of Order ::: 11.12.2006

Present
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Mahaveer Prasad, appellant no.1/2, and
Shri Shiv Charan, appellant no.1/4, for himself and power-of-attorney-holder for remaining appellants no.1/1, 1/3, 1/5, 1/6 and 1/7, present-in-person, along with their Advocate Shri R.K. Agrawal.

Shri Ravi Shankar, respondent no.1/2,
Shri Rakesh Kumar, respondent no.1/7 and
Shri Rajesh Kumar, respondent no.1/8, present-in-person along with their Advocate Shri A.L. Verma.

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By the Court:-

Heard learned counsel for the parties.

Sole plaintiff Madan Lal filed a suit for pre-emption in respect of property, in dispute, in the Court of Civil Judge, Alwar, which was partly-decreed by the lower court vide judgment and decree dated 4th of February, 1980. The lower court directed that the

plaintiff will be entitled to a decree of pre-emption in respect of the disputed house shown in Exhibit-1 except the shop and 'kotha' (numbered as 11 and 10) and 'chabutra' on the ground floor. The plaintiff was directed to pay a sum of Rs.4000/- (Rupees four thousand only), to defendant Khushi Ram. The plaintiff deposited a sum of Rs.4000/-, as directed by the lower court way-back on 15.3.1980 by cash-challan No.1869 dated 15.3.1980. Being aggrieved with the same, the defendant Khushi Ram filed an appeal, which was dismissed by the Additional District & Sessions Judge, Kishangarhbas, District Alwar, vide judgment and decree dated 18th of November, 1988. Thereafter the present second appeal was preferred by defendant Khushi Ram.

During the pendency of the second appeal, plaintiff Madan Lal and defendant Khushi Ram, both, died and their legal representatives have been substituted in their places.

During the course of arguments, the learned counsel for the appellants, in view of the finding of fact recorded by both the courts below and on the instructions of the appellants, who are present in the court, does not press the appeal on merits and contended that he may be allowed to withdraw the same. However, he contended that the appellants will have

some difficulty in withdrawing the amount of Rs.4000/- deposited by the respondents on 4.2.1980 and in view of the fact that he has not pressed his appeal, it will be appropriate to direct the respondents to pay a sum of Rs.4000/- in cash to the appellants and to withdraw the amount of Rs.4000/- by respondents themselves from the court.

The learned counsel for the respondents has no objection in allowing the appellants to withdraw their appeal and to pay a sum of Rs.4000/- in cash to them.

The respondents, who are present in the court, have paid a sum of Rs.4000/- in cash to the appellants, who are present in the court. The learned counsel for the appellants, Shri R.K. Agrawal, and the appellants, who are present in the court, admit the receipt of the amount of Rs.4000/- from the respondents.

The amount has already been paid by the LRs of the plaintiff to the LRs of the defendant in-cash today in the court, therefore, the amount of Rs.4000/- deposited by plaintiff Madan Lal, vide challan No.1869 dated 15.3.1980, will be allowed to be withdrawn by legal representatives of deceased plaintiff Madan Lal and the legal representatives of defendant-appellant Khushi Ram will have no objection in withdrawing the amount of Rs.4000/- deposited by plaintiff.

In view of the above, the second appeal is dismissed as withdrawn with no order as to costs.

It will be open for the legal representatives of deceased plaintiff Madan Lal to get their names substituted/inserted in the original sale-deed (Exhibit-2) as well as in the record of the Office of the Sub-Registrar, as per the judgment and decree dated 4.2.1980 passed by the Civil Judge, Alwar, in Civil Suit No.25/1975, in respect of the property for which decree has been passed.

(Narendra Kumar Jain) J.

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